IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.6299 of 2006

Rajhans Sahakari Dudh Utpadak
Sanstha Maryadit & Ors...Petitioners

Vs.

The State of Maharashtra & Ors...Respondents

Mr. A.V. Anturkar with Mr. S.S. Salunkhe, for the Petitioners
Mrs. M.P. Thakur, AGP for the Respondent Nos. 1,2,5, 6 and 8.
Mr. N.V. Walawalkar, Senior Advocate for Respondent No.3.

CORAM : F.I. REBELLO &

R.V. MORE,JJ.

DATED : 16TH JANUARY, 2007

P.C.

. The petitioners have approached this Court against the order of the enquiry officer holding that no case was made out for taking action against respondent No.4 under Section 78 of the M.C.S. Act. It may be mentioned that earlier two other petitions had been filed in which directions were issued that the matter be considered. Whilst disposing of Writ Petition No.551 of 2005 on 22nd November, 2005 we had directed that the Enquiry Officer to consider all materials which are available and then pass appropriate orders.

2. The Enquiry Officer after hearing the parties and considering the material has come to the conclusion, firstly

that the respondent No.4 did not misuse his power as a Director of the Bank to give loan in favour of M/s.Aluminium Profiles Company, hereinafter known as the Company. The Enquiry Officer in doing so considered the fact that the matter was referred to NABARD, f;urther for valuation and also for expert opinion and it is only after considering all that material, did the Board of Directors agree for sanctioning the loan to the Company. Considering this material the Enquiry Officer was pleased to hold that the Respondent No.4 had in no manner used his post as a Chairman to influence the grant of the loan to the Company.

. The second issue which came up for consideration was whether the respondent No.4 was a guarantor for the loan of the Company. Earlier on the mortgage deed Respondent No.4 had signed the document. That document was subsequently corrected by a subsequent deed. The Deed of Guarantee is given by two others whose names are set out in the enquiry report. They do not include the respondent No.4. The mortgage was in respect of a flat. The security of flat as given is not lost and is available to the bank if the loan is in default. On behalf of the bank learned Counsel points out that in fact they have initiated proceedings before D.R.T. for the recovery of the said loan.

. From a consideration of the findings recorded, we are clearly of the opinion that this was within the discretion of the Enquiry Officer. It cannot be said that the view taken was not a view which a reasonable person could not

have taken. It doesnot suffer from any perversity.

. In the light of that we are not inclined to interfere in the exercise of our extra ordinary jurisdiction. Petition dismissed accordingly. However, there shall be no order as to costs.

(**F.I. REBELLO**, J)

(**R.V. MORE, J)**